DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

CROCKETT, Administrator, *v.* ETTER et al.

Sept. 13, 1906.

[54 S. E. 864.]

1. Equity—Master's Report—Exceptions—Who May Take.—Where a fund was being administered in equity, one who filed a petition in the cause, asserting a lien by judgment, had a right to except to a master's report giving priority to another judgment and show that the other judgment was void.

[Ed. Note.—For cases in point, see vol. 19, Cent. Dig. Equity, § 908.]

2. Judgment—Default—Process to Sustain Judgment.—A default judgment was void where the return to the summons showed that it was delivered to defendant's "wife, not at his usual place of abode," instead of at his place of abode, as required by Code 1887, § 3207 [Va. Code 1904, p. 1684].

[Ed. Note.—For cases in point, see vol. 30, Cent. Dig. Judgment, §§ 25-33.]

3. Appeal—Disposition of Cause—Reversal—Remand.—Where a judgment relied on in a cause appeared from the return to the summons to be void for insufficient service of process, and the party relying on the judgment, with full knowledge of the objection thereto, failed to introduce any evidence to establish the validity of the judgment or to take any steps to validate it, the cause will not be remanded on reversal to give him an opportunity to do so.

NORFOLK & W. RY. CO. *v.* BIRCHFIELD.

Sept. 13, 1906.

[54 S. E. 879.]

1. Witnesses — Credibility — Unfriendly Feeling. — In an action against a carrier for an assault committed on plaintiff by another passenger, with which the conductor made no attempt to interfere, defendant, as affecting the credibility of plaintiff as a witness, had a right to show that he appeared as a witness when the other passenger was being prosecuted for the assault.

[Ed. Note.—For cases in point, see vol. 50, Cent. Dig. Witnesses, § 1189.]

2. Appeal—Harmless Error—Admission of Evidence.—The exclusion of evidence showing bias of a witness is not reversible error, t appearing that there was sufficient evidence before the jury to enable them to estimate and weigh his testimony.

3. Carriers—Passengers—Injuries—Evidence.—In an action against

a carrier for an assault on plaintiff by another passenger, who falsely stated to plaintiff that he was a special officer of the carrier, the difficulty having arisen from his ordering plaintiff to stop smoking in the car, and the conductor having made no effort to interfere in the difficulty, there was no error in admitting the testimony of a witness, who was in the car at the time, that he did not hear a certain person in the car, who was a detective for the carrier, say anything about who the assaulting party was, just at the time that the difficulty occurred.

4. Same.—Where, in an action against a carrier for an assault committed on plaintiff by another passenger, with which the conductor made no effort to interfere, it appeared that after the difficulty a certain person riding in the car led the assaulting party from the car, it was not error to admit evidence to show that the former was a detective employed by the carrier.

5. Trial—Instructions—Requests—Changing Language of Requested Instruction.—Defendant requested an instruction that the jury could not find for plaintiff on a certain count, because "the evidence which has been produced before the jury will not support any verdict for the plaintiff on such count." The instruction was refused, but the court in lieu thereof gave an instruction that the court had refused to instruct them on the law arising on the count in question for the reason that the evidence would not support any verdict for the plaintiff thereon. Held, that the effect of the language of the instruction refused and the one given was substantially the same, and there was no error in the refusal.

6. Carriers—Passengers—Injuries—Action—Instructions.—Plaintiff, a passenger, was ordered to stop smoking by another passenger, who falsely stated that he was a special officer of the carrier, and a difficulty ensued in which plaintiff was assaulted by the other passenger, the conductor making no effort to interfere, and in an action against the carrier the court instructed that if the jury believed that the conductor believed that the assaulting party was an officer, it was a circumstance that might be considered by the jury on the question whether the conductor had notice of the impending assault; but that though he might have believed that the party in question was an officer, still if he had reasonable ground to believe that such person was about to assault plaintiff, it was his duty to interfere. Held, that the instruction was favorable to defendant, and not misleading.

7. Same—Evidence—Sufficiency.—In an action against a carrier for damages for an assault committed on plaintiff by another passenger, with which the conductor made no effort to interfere, evidence considered, and held that the conductor must have heard the altercation from which the assault arose, and that it was of a character that should have warned him that it was his duty to interefere.

8. Same—Care Required of Carrier—Acts of Other Passengers.—The conductor of a railroad train is bound to use a high degree of

care to protect a passenger from an assault upon him by another passenger.

[Ed. Note.—For the cases in point, see vol. 9, Cent. Dig. Carriers, §§ 1125-1127.]

CRANES NEST COAL & COKE CO. *v.* VIRGINIA IRON, COAL & COKE CO.

Sept. 13, 1906.

[54 S. E. 884.]

1. Mines and Minerals—Leases—Construction.—Where an agreement amending a lease of a mine provided that the lessor should have the right at any time or times to designate not exceeding three haulways for the lessor's use to transport coal from the lessor's adjoining mine, and imposed on the lessee the duty at all times of maintaining and supplying such haulways with proper ventilation and air courses during the term of the lease, in consideration for which the lessor agreed to pay the lessee a proper compensation, and the original lease gave the lessor the right to require all entries to be kept open for future use, the amendatory agreement contemplated the present use by the lessor of the three haulways to be designated, and did not suspend its right to use such haulways until after their use had been discontinued by the lessee.

2. Same—Reasonable Use.—Where a contract between the lessor and lessee of a mine provided that the lessor should have the right to use certain designated haulways through the leased mine, the limitation that the use of the haulways should not injuriously interfere with the operations of the lessee did not impair the lessor's right to the reasonable use of such haulways, but was effective only to protect the lessee against the lessor's abuse of such right.

3. Same.—Where a lease of a mine prohibited excavations within 60 feet of the dividing line between the leased property and an adjoining mine operated by the lessor, but a subsequent supplementary agreement gave the lessor the right to use certain designated haulways through the leased premises, the driving of cross-entries over the dividing line between the properties by the lessor so as to make its right to use such haulways available did not constitute a violation of the 60-foot covenant nor of Code 1904, § 2570, forbidding excavations in any mine or shaft within five feet of the dividing line of other property without the written consent of the owner of the adjoining land.

4. Same—Incidental Rights.—The right of the lessor of a mine to bring coal from adjoining land to the haulways on the demised premises was an essential incident to the right to transport the coal along such connecting haulways conferred by a supplementary agreement.

5. Contracts—Construction.—Where a written contract is unequivocal, its meaning must be determined by its contents alone.